

Osberg v. Foot Locker, Inc., et al., 07-cv-01358 (KBF) (S.D.N.Y.)

Joint Pretrial Order

July 1, 2015

Exhibit 11D

Declaration of Richard Schaeffer

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GEOFFREY OSBERG

**On behalf of himself and on
behalf of all others similarly situated,**

Plaintiff,

- against -

FOOT LOCKER, INC.,

FOOT LOCKER RETIREMENT PLAN,

Defendants.
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Case No.: 07 CV 1358 (KBF)

DECLARATION OF RICHARD SCHAEFFER

I, Richard Schaeffer, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. My name is Richard Schaeffer. I live in Stevens, Pennsylvania. I am 62 years old. I worked for Woolworth from 1975, when I started at Woolworth's Mid-Atlantic Distribution Center in Denver, Pennsylvania, until 1997, when that facility was closed. I held three positions at Woolworth: as a forklift driver, then as a forklift supervisor, then as a rebuyer.

2. After my employment with Woolworth ended in 1997, when I was 45 years old, I elected a rollover lump sum so that I could invest my pension benefit to prepare for retirement.

3. I am currently employed at Elixir Industries as a purchaser. I am taking time off of work to testify at trial because I believe that what Woolworth did to its employees with regard to the pension was wrong. I now know that I was the victim of a benefit freeze during 1996 up until the time I stopped working for the company in August 1997. I had no idea that this was happening based on what Woolworth told me at the time about the pension plan.

My understanding about the Plan changes

4. I remember learning from communications I received at the end of 1995 – the September 1995 announcement letter and the November highlights memo – that the Plan was being converted to a cash balance format. I received more communications in 1996 and 1997, including benefit statements and a summary plan description. I did not understand every detail about the pension plan while I was working, but I would have read every communication that I received and my understanding of the plan is based on them. I expected that when I retired, my pension would be based on all my years working for the company.

5. I do not recall any meetings or presentations that focused on or discussed the pension plan including around the time that the Mid-Atlantic Distribution Center closed in 1997. I remember that meetings were held concerning the closing, but they focused on assisting employees with resumes, additional education, and help from the government.

6. Based on the communications that I received about the Plan changes in 1995-1997, I understood that my benefit was now my account balance and that it would keep growing as I worked for Woolworth. Those communications did not tell me that my benefit was going to be frozen or that it might be frozen. Nothing that I read in any of the documents I received gave me any idea that something like that would happen. Instead, those documents showed me and led me to believe that my pension benefit was growing based on the compensation credits and interest credits that Woolworth was adding to my account.

7. I also believed from reading those communications that the old plan formula was no longer relevant because the entire value of my old plan benefit was converted into my account. I believed that the plan after 1996 was a better plan and that I was earning new pension credits for my future employment. I believed it when Woolworth told me in the Plan statements

I received in 1996 and 1997 that my account balance would be the amount I would receive if I left the next day.

September 11, 1997 Letter

8. I remember contacting someone in Woolworth's Corporate Benefit Department in mid-1997 regarding my and my wife's pension benefit, which I did because I wanted a bottom line amount for what I would receive as my pension benefit.

9. I also remember receiving the letter Ms. Derham sent in response. That letter is the Class's Trial Exhibit PX390. In her letter, Ms. Derham provided me with the bottom line amount of what I would receive as my pension benefit. That letter also provided information about the calculations used to arrive at that number. I did not really understand those calculations, but I trusted Woolworth to do the right thing and did not doubt the accuracy of the calculations. However, I was more focused on the bottom line number. I did not understand the letter and calculations that Ms. Derham provided me to be telling or showing me that my pension benefit had not been growing during 1996 and 1997. I did not see that clearly stated anywhere in the letter or calculations.

10. Something else I remember reading in that letter was that my old plan benefit had been actuarially converted into my account balance using a 9% interest rate. I thought that an actuarial conversion meant an equal value conversion. I did not understand that using 9% for the actuarial conversion would result in my account balance starting out with much less than the benefit I was actually due.

11. I remember being very confused by all the interest rates mentioned in the communications I received. For example, Ms. Derham's letter referenced three different interest

rates: 9%, 6.55%, and 6%. I remember reading her letter to mean that 9% was the rate at which my benefit was growing and thinking that 9% was pretty good.

Lump Sum Distribution

13. When I took my lump sum benefit in 1998, I noticed that the amount I received was larger than my account balance. I was surprised that it was larger, but believed that it had something to do with the explanation of federal law provided in Ms. Derham's letter. This larger lump sum did not indicate to me at all that my pension benefit had not grown in the year and eight months I worked at Woolworth after 1996.

14. Around the time I took my lump sum distribution, I was also aware of something called a minimum lump sum because it was mentioned in Ms. Derham's letter. Based on the communications I received from Woolworth, I believed that the minimum lump sum was the result of a formula required by federal law or regulations. I did not think that it meant that I had stopped earning additional benefits.

15. I was shocked to learn recently from my attorney that my pension had been frozen after January 1, 1996 and that I had earned no additional pension benefits based on my work in 1996 and 1997.

Dated: July 1, 2015


Richard Schaeffer